



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

November 23, 2004

Colonel Timothy J. Gallagher
District Engineer
U.S. Army Corps of Engineers
P.O. Box 898
Anchorage, Alaska 99506-0898

Re: POA-1999-616-M
Eastern Passage 19

Attn: Ms. Janice Stuart, Ph.D.

Dear Colonel Gallagher:

The National Marine Fisheries Service (NMFS) reviewed the November 9, 2004 letter from Ms. Janice Stuart concerning a modification of permit number POA-1999-617-M. The permit holder, Loren Enright of Critter Enterprises LLC, requests a five-year time extension on their permit which would fill approximately 2.9 acres of waters of the United States consisting of approximately 0.5 acres of tidal wetlands, 1.2 acres of non-wetland intertidal area and 1.2 acres of forested wetlands. The permitted action includes building a bulkhead that would be approximately 292 feet seaward of the High Tide Line and 244 feet seaward of Mean High Water on the western side. It would extend approximately 180 feet seaward of the High Tide Line and 150 feet seaward of Mean High Water at toe of slope on the eastern side. Eight 3-pile dolphins would be installed approximately 50 feet seaward of the bulkhead or 225 feet seaward of Mean High Water. The pilings will be galvanized steel. A 6 foot by 60 foot steel walkway would be utilized to connect the bulkhead to a moored barge and a 40 foot by 100 foot mobile barge loading conveyor would be used to transport finished materials to barges. High tide and low tide "ramp-barge" ramps would be constructed within the bulkhead bounds at the western end of the bulkhead for use in loading and off-loading ramp-barges.

We offer the following comments specific to the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA).

Essential Fish Habitat

Section 305(b) of the MSFCMA requires Federal agencies to consult with NMFS on all actions that may adversely affect EFH. NMFS is required to make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects.

The Alaska Department of Fish and Game (ADF&G) anadromous stream catalog includes stream number 108-40-10270, which supports coho salmon, is greater than one mile to the east



of the project area. Across the channel from this stream is Crittenden Creek, a large stream system with pink, chum and coho salmon, Dolly Varden char, and steelhead trout. To the south of Crittenden Creek is Virginia Lake which supports runs of sockeye, pink and chum salmon and Dolly Varden char. The Stikine River enters Eastern Passage north of the project area.

The inshore area of the project location also provides important habitat for several marine species including Pacific cod, arrowtooth flounder, walleye pollock, dusky rockfish, shortraker/rougheye rockfish, yelloweye rockfish, skates, and sculpins.

We offer the following EFH Conservation Recommendations pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Act.

1. We recommend that construction activities not be conducted during periods of peak use by juvenile salmonids and herring. No in-water work should be permitted from March 15 through June 15 to protect out migrating salmon and rearing salmonid smolts and to reduce the potential impact to spawning herring.
2. Pile-driving can disrupt migration and cause physical damage to fish. To the extent possible, drive piles during low tide periods in intertidal and shallow subtidal areas to prevent injuries to fish. We recommend that a vibratory hammer be used to drive the steel piles. Under those conditions where impact hammers are required for reasons of seismic stability or substrate type, we recommend that the piles be driven as deep as possible with a vibratory hammer prior to the use of the impact hammer. A block of wood placed between the impact hammer and the piling is recommended to attenuate the sound. If peak sound pressure levels from deepwater pile driving exceed the 180 dB re μ Pa threshold for injury to fish (which is unlikely if small diameter piles are used) implement measures to reduce sound pressure such as: surrounding the pile with an air bubble curtain, using a smaller hammer to reduce the sound pressure, or using a hydraulic hammer if impact driving cannot be avoided.
3. All work below the high tide line should be limited to low tide stages to reduce turbidity.
4. Under the Clean Water Act Section 404 (b)(1) Guidelines (40 CFR 230), the Corps can only permit the least environmentally damaging practicable alternative for a proposed discharge of fill into jurisdictional wetlands or waterways. The Corps should require the applicant to demonstrate that they have evaluated and fully considered options to avoid or minimize the extent of the fill necessary for the bulkhead.
5. In accordance with the sequencing requirements of the Clean Water Act, NMFS recommends that compensatory mitigation be required for any unavoidable impacts to waters of the U.S.

Under section 305(b)(4) of the Magnuson-Stevens Act, the Corps is required to respond to NMFS EFH recommendations in writing within 30 days. If the Corps will not make a decision within 30 days of receiving NMFS EFH Conservation Recommendations, the Corps should

provide NMFS with a letter within 30 days to that effect, and indicate when a full response will be provided.

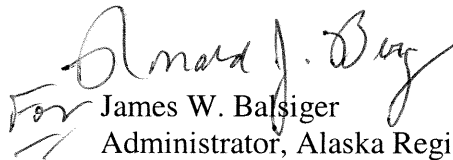
Threatened and Endangered Species / Marine Mammals

The project is within the range of endangered humpback whales and threatened Steller sea lions, as well as harbor porpoises, harbor seals and killer whales, which are protected under the MMPA. The MMPA and the ESA prohibit the injury, harm or harassment of marine mammals.

Pile driving introduces high levels of noise into the water column, with the potential to harass or injure marine mammals. Received sound levels in the range of 130-135 decibels have been measured up to one kilometer from a pile driver (Johnson et. al., 1986). Humpback whales, killer whales, Steller sea lions, harbor seals, and harbor porpoises may occur in the project area and could be affected by this work. To reduce the possibility for harassment or injury to marine mammals, NMFS recommends that pile driving not occur if any marine mammals are observed within 200 meters of the platform. The operator must scan the area for the presence of marine mammals. If marine mammals are sighted within 200 meters of the sound source, pile driving must cease until the animals leave the immediate area.

If you have any questions regarding our comments and conservation recommendations for this project, please contact Cindy Hartmann (586-7585, cindy.hartmann@noaa.gov).

Sincerely,


For James W. Balsiger
Administrator, Alaska Region

cc: Applicant, Critter Enterprises, LLC, P. O. Box 1373, Ward Cove, AK 99928
EPA Juneau, Chris Meade
ADF&G, Janet Schempf, Juneau
USFWS, Steve Brockmann
OHMP, Jim Cariello, Petersburg
ADF&G, Scott Forbes, Wrangell
ADEC, ADNR, Juneau

References:

Johnson, S.R., C.R. Greene, R.A. Davis, and W.J. Richardson. 1986. Bowhead whales and underwater noise near the Sandpiper Island drillsite, Alaskan Beaufort Sea, autumn 1985, Reprinted by LGL Limited Environmental Research Associates, King City, Ontario, and Greeneridge Sciences, Inc., Santa Barbara, CA, for Shell Western Exploration & Production Inc., Anchorage, AK. 130p.